

UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35106

**UNITED STATES DEPARTMENT OF ENERGY – RAIL
CONSTRUCTION AND OPERATION – CALIENTE LINE IN
LINCOLN, NYE, AND ESMERELDA COUNTIES, NEVADA**

**STATEMENT
OF
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**PUBLIC HEARING
LAS VEGAS, NEVADA
DECEMBER 4, 2008**

Mr. Chairman, I want to begin by thanking you along with the other members of the Board for this opportunity to speak to you and to place my statement in the record.

I do not appear before you to complain about Yucca Mountain or the proposed Caliente Rail Line in general or to argue the pros and cons of rail haul to storage of high-level nuclear waste. I made the request to speak to you because I want to focus your attention on a specific problem with the proposed Caliente Rail Line route as determined by DOE in its record of decision pertaining.

The problem I want you to understand is that the DOE wants to build its railroad to haul high level radioactive waste right into and through, with major switching and staging in, the very center of Caliente, Nevada.

Please do not issue a certificate to DOE that would authorize the railroad to be built into and through the very center of the City of Caliente.

Why has DOE chosen to build and operate its radioactive waste rail into and through the center of a group of human beings in Caliente? We believe mistakes have been made, because the decision to build into and operate in the center of Caliente when such can reasonably and safely be avoided is patently wrong and violates basic common sense. I ask that this Board not adopt DOE's FEIS on the Caliente Rail Alignment because mistakes and shortcomings in the FEIS are patent and obvious from the record.

You should, and I implore you to, make DOE correct the problem by your refusal to issue a certificate until DOE completes a full and adequate environmental impact statement disclosure pursuant to NEPA.

What are the mistakes of record to which I refer?

DOE's mistakes before this Board began with the application, and notices thereof, which state that DOE's proposed Caliente Rail Line will connect with the Union Pacific Railroad "near Caliente." This statement was and is false and misleading, both to this Board and to the public. DOE's Record of Decision, filed in this matter after the deadline for filing of comments by interested parties, governmental agencies and the public, and filed even after the filing of DOE's reply, opts for the so-called "Caliente Alternative Segment." The DOE has decided that it wants to connect with the Union Pacific Railroad – not near Caliente - but in the VERY CENTER OF THE CITY.

DOE has a reasonable and very viable alternative to connect with the Union Pacific Railroad that DOE has studied and designed in detail – the "Eccles Alternative Segment" whereby DOE's proposed railroad would be built to connect with the Union Pacific Railroad "near Caliente" – actually four miles outside and to the east of Caliente.

Eccles would avoid risk, damage to and destruction of life, health, property and environment posed by the Caliente Alternative Segment. No one living and working in Caliente needs to be exposed to the physical dangers, accidents, noise, dust and air pollution that the Caliente Alternative Segment would bring right to the very doorsteps of their homes, churches, businesses and civic buildings.

Eccles would avoid the known and unknown risks, the defined and undefined risks, to the lives and health of Calientians that will result from close, repeated and even prolonged exposure to radiation from DOE cargoes. This is especially true in the event that DOE is not required to use dedicated trains from point of origin to Yucca Mountain, since increased switching and resident time in downtown Caliente will result if carloads of radioactive waste are sent general freight.

Eccles would avoid running across the active and commercially important Caliente geothermal field, and risks attendant thereto, which DOE has not studied and has refused to address in its EIS and record of decision.

Eccles would avoid the destruction of wetlands. The DOE states in its documents that Caliente Alternative Segment will destroy and impact wetlands and riparian habitat whereas the Eccles Alternative Segment will not destroy wetlands and "might" impact some riparian habitat. DOE states in its Reply herein that the EPA has agreed that the Caliente Alternative Segment would be ok, provided that: (1) DOE restores 3 acres of riparian habitat in Rainbow Canyon for every 1 acre of wetlands it destroys along the Caliente Alternative Segment; and (2) DOE provides a detailed habitat restoration plan in its record of decision, based on the 3:1 deal. Of course that is a good deal for EPA, but do we really want EPA to encourage DOE to destroy wetlands in Meadow Valley Wash when the Eccles Alternative would result in no wetlands destroyed? Amazingly, in its record of decision, the DOE failed to provide the detailed habitat restoration program on which EPA conditioned its approval of the Caliente Alternative Segment. DOE failing in the condition, EPA's approval is not effective. Worse, none of us, not this Board, not the Board's staff, not the public, not EPA. No one knows what riparian habitat would be restored, where it is actually and specifically located, what would constitute restoration, how

restoration would be accomplished, what the benefits of restoration to the environment or to any particular species would be, or how lasting restoration would be. I ask that this Board take notice of the fact that the riparian habitat in Rainbow Canyon has been impacted by three major factors: First, periodic catastrophic flooding and erosion, most recently in 2005. Of course, these periodic floods and resulting erosion are natural phenomena, the results of which should not be fooled with lightly under the banner of "riparian habitat restoration." Second, there is a paved NV state highway built in the canyon, much of which is scheduled for reconstruction. And, third, and most invasively, there is the mainline of the Union Pacific Railroad. It took a lot of bulldozing in Rainbow Canyon and the placement of many millions of cubic yards of dirt, sand, gravel, riprap and ballast to reconstruct many miles this important arterial after the 2005 flood. New roadway, underground utility and widened roadbed have resulted and impacted the riparian habitat of Meadow Valley Wash in Rainbow Canyon. Are the DOE and EPA talking about destroying wetlands unnecessarily by choice of the Caliente Alternative Segment over the Eccles Alternative in order that DOE repairs riparian habitat in Rainbow Canyon that was destroyed as a matter of necessity or convenience in the repair, rebuilding and improvement of the Union Pacific Railroad mainline in Rainbow Canyon? No one knows because DOE failed to put forward the detailed riparian habitat restoration plan that EPA required in its letter that DOE attached to its reply in this matter in support of the DOE's choice of the Caliente Alternative Segment.

Forgive mixing in the vernacular, but that is not just nuts, it is insufficient under the law which insufficiency DOE made of record in this proceeding.

DOE's FEIS and resulting record of decision are fatally flawed for failure to consider and report the impacts of the Caliente Alternative Segment to the people of Caliente, wetlands of the United States, and geothermal resources and geologic hazards.

We know that the Board's staff has participated with DOE in the EIS process. I am also mindful that the Board's staff is relatively small as agencies go, actually small when compared to the staffs of many of the private sector medium-sized and larger environmental consulting firms, especially some of those firms who have work for DOE. We all understand that STB does not receive the budget to participate in much detail, certainly not to contribute significantly, in each and every EIS that comes along. We all know that this Board does not have the budget to hire the staff that it would take to contribute to, fully understand, and be responsible for the content of an EIS for a massive project such as is the proposed Caliente Rail Line.

With all due respect to the Board and to the staff, and with confidence that this Board can divine when an EIS does not meet the smell test when, as is the case here, siting does violence to common sense. This particular EIS for the Caliente Rail Alignment needs to be sent back for remedial work - at least with regard to public risks, wetlands and riparian impacts, and geologic and geothermal hazards and resources - and the granting of any certificate by this Board held in abeyance until such time as a complete disclosure is completed by DOE.

Further, as a result and as a matter of record before the Board, there is no public convenience or necessity that will be served by the Caliente Alternative Segment. Caliente is already rail served by the Union Pacific Railroad. Such segment, as it would bring 100% of DOE's high level nuclear waste cargoes and all switching of such cargoes off the Union Pacific Railroad into the center of Caliente is against the public interest. DOE has a very viable and practical alternative at Eccles.

Thank you for this opportunity to speak to you, to place this statement in the record, and for your consideration.



John H. Huston